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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

STARDOCK SYSTEMS, INC.,

 Plaintiff/Counter-Defendant,

 vs.

 PAUL REICHE III and ROBERT
 FREDERICK FORD,

 Defendants/Counter-Claimants.

Case No.: 17-cv-07025-SBA

**PLAINTIFF’S ANSWER AND
 AFFIRMATIVE DEFENSES TO
 DEFENDANTS’ COUNTERCLAIM**

AND RELATED COUNTERCLAIM

Plaintiff and Counter-Defendant Stardock Systems, Inc. (“Stardock”), by and through its counsel, responds as follows to Defendants and Counter-Claimants Paul Reiche III’s (“Reiche”) and Robert Frederick Ford’s (“Ford”) (collectively, “Defendants”) Counterclaim.

CASE NO. 4:17-CV-07025-SBA

INTRODUCTION

1
2 1. Stardock denies Defendants' allegation that Stardock is infringing on their alleged
3 copyrights to the games or engaging in any form of unfair competition. Stardock lacks
4 knowledge or information sufficient to form a belief about the truth of any and all other
5 allegations asserted in Paragraph 1 of the Counterclaim, and on that basis denies the allegations.
6

7 2. Stardock lacks knowledge or information sufficient to form a belief about the truth
8 of any and all allegations asserted in Paragraph 2 of the Counterclaim, and on that basis denies
9 the allegations.

10 3. Stardock admits that, at the very least, it acquired the rights and registration for the
11 STAR CONTROL trademark (U.S. Trademark Registration No. 2,046,036) and the Star Control
12 3 copyright (U.S. Copyright Registration No. PA 799-000) from Atari in 2013. Except as
13 expressly admitted herein, Stardock denies any and all other allegations asserted in Paragraph 3 of
14 the Counterclaim in their entirety.
15

16 4. Stardock admits that it has attempted to resolve this matter informally with
17 Defendants and decided to file this suit as a result of the parties being unable to reach an
18 agreement. Except as expressly admitted herein, Stardock denies any and all other allegations
19 asserted in Paragraph 4 of the Counterclaim in their entirety.
20

PARTIES

21
22 5. Stardock admits the allegations in Paragraph 5 of the Counterclaim.

23 6. Stardock admits the allegations in Paragraph 6 of the Counterclaim.

24 7. Stardock admits that it is a Michigan corporation with a principal place of business
25 in Plymouth, Michigan and formerly had a location in Sunnyvale, California. Stardock lacks
26 knowledge or information sufficient to form a belief about the truth of any and all other
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1 allegations asserted in Paragraph 7 of the Counterclaim, and on that basis denies the allegations.

2
3 **JURISDICTION AND VENUE**

4 8. Stardock admits the allegations in Paragraph 8 of the Counterclaim.

5 9. Stardock admits the allegations in Paragraph 9 of the Counterclaim, but denies that
6 it engaged in any wrongdoing or unlawful conduct.

7 10. Stardock admits the allegations in Paragraph 10 of the Counterclaim, but denies
8 that it engaged in any wrongdoing or unlawful conduct.

9
10 **INTRADISTRICT ASSIGNMENT**

11 11. Stardock admits the allegations in Paragraph 11 of the Counterclaim, but denies
12 that it engaged in any wrongdoing or unlawful conduct.

13
14 **FACTUAL BACKGROUND**

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16 ***Reiche and Ford's Creation and Development of Star Control and Star Control II***

17 12. Stardock lacks knowledge or information sufficient to form a belief about the truth
18 of any and all allegations asserted in Paragraph 12 of the Counterclaim, and on that basis denies
19 the allegations.

20 13. Stardock admits that Accolade and Reiche entered into a License Agreement with
21 an effective date of October 7, 1988. Stardock also admits that the 1988 License Agreement is
22 shown in Exhibit 1 to the Counterclaim and reflects the terms set forth in the agreement.

23
24 Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all
25 other allegations asserted in Paragraph 13 of the Counterclaim, and on that basis denies the
26 allegations.

27 14. Stardock asserts that the language of the 1988 License Agreement is set forth in
28

1 Exhibit 1 to the Counterclaim. Except as expressly admitted herein, Stardock denies any and all
2 other allegations in Paragraph 14 of the Counterclaim, including Defendants' interpretation and
3 construction of the agreement, in their entirety.

4 15. Stardock asserts that the language of the 1988 License Agreement is set forth in
5 Exhibit 1 to the Counterclaim. Except as expressly admitted herein, Stardock denies any and all
6 other allegations in Paragraph 15 of the Counterclaim, including Defendants' interpretation and
7 construction of the agreement, in their entirety.

8 16. Stardock asserts that the language of the 1988 License Agreement is set forth in
9 Exhibit 1 to the Counterclaim. Except as expressly admitted herein, Stardock denies any and all
10 other allegations of Paragraph 16 of the Counterclaim, including Defendants' interpretation and
11 construction of the agreement, in their entirety.

12 17. Stardock asserts that the language of the 1988 License Agreement is set forth in
13 Exhibit 1 to the Counterclaim. Except as expressly admitted herein, Stardock denies any and all
14 other allegations in Paragraph 17 of the Counterclaim, including Defendants' interpretation and
15 construction of the agreement, in their entirety.

16 18. Stardock asserts that the language of the 1988 License Agreement is set forth in
17 Exhibit 1 to the Counterclaim. Except as expressly admitted herein, Stardock denies any and all
18 other allegations in Paragraph 18 of the Counterclaim, including Defendants' interpretation and
19 construction of the agreement, in their entirety.

20 19. Stardock asserts that the language of the 1988 License Agreement is set forth in
21 Exhibit 1 to the Counterclaim. Except as expressly admitted herein, Stardock denies any and all
22 other allegations in Paragraph 19 of the Counterclaim, including Defendants' interpretation and
23 construction of the agreement, in their entirety.

1 20. Stardock lacks knowledge or information sufficient to form a belief about the truth
2 of any and all allegations asserted in Paragraph 20 of the Counterclaim, and on that basis denies
3 the allegations.

4 21. Stardock lacks knowledge or information sufficient to form a belief about the truth
5 of any and all allegations asserted in Paragraph 21 of the Counterclaim, and on that basis denies
6 the allegations.

7 22. Stardock admits that other individuals were involved in the development and
8 creation of Star Control I and Star Control II. Stardock lacks knowledge or information sufficient
9 to form a belief about the truth of any and all other allegations asserted in Paragraph 22 of the
10 Counterclaim, and on that basis denies such allegations.

11 23. Stardock lacks knowledge or information sufficient to form a belief about the truth
12 of any and all allegations asserted in Paragraph 23 of the Counterclaim, and on that basis denies
13 the allegations.

14 24. Stardock admits that Star Control I and Star Control II have become popular over
15 the last couple of decades in the video game community. Stardock also admits that the following
16 link contains the content associated with it: [https://kotaku.com/the-game-that-won-our-classic-pc-](https://kotaku.com/the-game-that-won-our-classic-pc-games-list-if-it-ha-1349952997)
17 [games-list-if-it-ha-1349952997](https://kotaku.com/the-game-that-won-our-classic-pc-games-list-if-it-ha-1349952997). Stardock lacks knowledge or information sufficient to form a
18 belief about the truth of any and all other allegations asserted in Paragraph 24 of the
19 Counterclaim, and on that basis denies such allegations.

20 25. Stardock lacks knowledge or information sufficient to form a belief about the truth
21 of any and all allegations asserted in Paragraph 25 of the Counterclaim, and on that basis denies
22 the allegations.

23 26. Stardock admits that Exhibit 2 to the Counterclaim shows an unsigned document
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1 titled "Addendum No. 1 to License Agreement Between Accolade, Inc. and Paul Reiche III".
2 Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all
3 other allegations asserted in Paragraph 26 of the Counterclaim, and on that basis denies such
4 allegations.

5
6 ***Star Control 3 and 4 and Expiration of the 1988 License Agreement***

7 27. Stardock admits that Exhibit 3 to the Counterclaim shows a document titled
8 "Addendum No. 2 to License Agreement Between Accolade, Inc. and Paul Reiche III". Stardock
9 lacks knowledge or information sufficient to form a belief about the truth of any and all other
10 allegations asserted in Paragraph 27 of the Counterclaim, and on that basis denies such
11 allegations.

12
13 28. Stardock admits that Defendants' Counterclaim defines the "Classic Star Control
14 Games" as Star Control, Star Control II, and Star Control III, collectively.

15 29. Stardock lacks knowledge or information sufficient to form a belief about the truth
16 of any and all allegations asserted in Paragraph 29 of the Counterclaim, and on that basis denies
17 the allegations.

18
19 30. Stardock lacks knowledge or information sufficient to form a belief about the truth
20 of any and all allegations asserted in Paragraph 30 of the Counterclaim, and on that basis denies
21 the allegations.

22 31. Stardock lacks knowledge or information sufficient to form a belief about the truth
23 of any and all allegations asserted in Paragraph 31 of the Counterclaim, and on that basis denies
24 the allegations.

25
26 32. Stardock admits that Exhibit 4 to the Counterclaim shows a document titled
27 "Addendum No. 3 to License Agreement Between Accolade, Inc. and Paul Reiche III". Stardock

1 lacks knowledge or information sufficient to form a belief about the truth of any and all other
2 allegations asserted in Paragraph 32 of the Counterclaim, and on that basis denies such
3 allegations.

4 33. Stardock admits that the purported language from Paragraph 1.5 of Addendum No.
5 3 is set forth in Exhibit 4 to the Counterclaim and that the document speaks for itself. Stardock
6 lacks knowledge or information sufficient to form a belief about the truth of any and all other
7 allegations asserted in Paragraph 33 of the Counterclaim, and on that basis denies such
8 allegations.

9 34. Stardock admits that the purported language from Paragraph 4.1 of Addendum No.
10 3 is set forth in Exhibit 4 to the Counterclaim. Stardock lacks knowledge or information
11 sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 34
12 of the Counterclaim, and on that basis denies such allegations.

13 35. Stardock admits that the purported language from Paragraph 7 of Addendum No. 3
14 is set forth in Exhibit 4 to the Counterclaim. Stardock lacks knowledge or information sufficient
15 to form a belief about the truth of any and all other allegations asserted in Paragraph 35 of the
16 Counterclaim, and on that basis denies such allegations.

17 36. Stardock lacks knowledge or information sufficient to form a belief about the truth
18 of any and all other allegations asserted in Paragraph 36 of the Counterclaim, and on that basis
19 denies the allegations.

20 37. Stardock lacks knowledge or information sufficient to form a belief about the truth
21 of any and all allegations asserted in Paragraph 37 of the Counterclaim, and on that basis denies
22 the allegations.

***Accolade's Successors' Abandonment and Fraudulent Renewal
of the Registration for the Star Control Trademark***

38. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 38 of the Counterclaim, and on that basis denies the allegations.

39. Stardock admits that on November 25, 2002, Accolade assigned U.S. Trademark Registration No. 2,046,036 for STAR CONTROL to Infogrames, and on March 17, 2003, Infogrames filed with the United States Patent and Trademark Office ("USPTO") a Declaration of Use and Incontestability along with a specimen of use showing use of the mark of STAR CONTROL. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 39 of the Counterclaim, and on that basis denies such allegations.

40. Stardock admits that Infogrames was renamed Atari. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 40 of the Counterclaim, and on that basis denies the allegations.

41. Stardock admits that on September 18, 2007, Atari filed with the USPTO a Declaration of Use in Commerce and Application for Renewal of Registration for U.S. Trademark Registration No. 2,046,036 for STAR CONTROL. Except as expressly admitted herein, Stardock denies any and all other allegations asserted in Paragraph 41 of the Counterclaim in their entirety.

***Reiche and Ford's Continued Development of the Star Control Universe
Through The Ur-Quan Masters and Agreement with Atari to Resume Sales
of the Classic Star Control Games***

1 42. Stardock denies that Reiche and Ford regained all rights to “their games,”
2 including Star Control I and Star Control II. Stardock lacks knowledge or information sufficient
3 to form a belief about the truth of any and all other allegations asserted in Paragraph 42 of the
4 Counterclaim, and on that basis denies such allegations.

5 43. Stardock admits that Defendants’ Counterclaim defines the “Reiche and Ford’s
6 Star Control Games” as Star Control, Star Control II, including The Ur-Quan Masters, and
7 Reiche’s Preexisting Characters used in Star Control 3, collectively. Stardock denies the
8 accuracy of this definition and further denies any suggestion or assertion that Reiche and Ford
9 own any intellectual property in the foresaid defined Reiche and Ford’s Star Control Games.
10

11 44. Stardock denies Reiche’s and Ford’s suggested possession and ownership of Star
12 Control, Star Control II, including The Ur-Quan Masters, and Reiche’s Preexisting Characters
13 used in Star Control 3. Stardock admits that the Classic Star Control Games have become
14 popular over the last couple of decades in the video game community and have acquired a
15 reputation and goodwill among the purchasing public. Stardock lacks knowledge or information
16 sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 44
17 of the Counterclaim, and on that basis denies such allegations.
18

19 45. Stardock admits that Exhibit 6 to the Counterclaim shows a copyright registration
20 certificate for the work titled “Star Control II”, which purports to list Reiche and Ford as the
21 claimants. Stardock lacks knowledge or information sufficient to form a belief about the truth of
22 any and all other allegations asserted in Paragraph 45 of the Counterclaim, and on that basis
23 denies such allegations.
24

25 46. Stardock lacks knowledge or information sufficient to form a belief about the truth
26 of any and all allegations asserted in Paragraph 46 of the Counterclaim, and on that basis denies
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28

1 the allegations.

2 47. Stardock lacks knowledge or information sufficient to form a belief about the truth
3 of any and all allegations asserted in Paragraph 47 of the Counterclaim, and on that basis denies
4 the allegations.

5 48. Stardock lacks knowledge or information sufficient to form a belief about the truth
6 of any and all allegations asserted in Paragraph 48 of the Counterclaim, and on that basis denies
7 the allegations.

8 49. Stardock lacks knowledge or information sufficient to form a belief about the truth
9 of any and all allegations asserted in Paragraph 49 of the Counterclaim, and on that basis denies
10 the allegations.

11 50. Stardock lacks knowledge or information sufficient to form a belief about the truth
12 of any and all allegations asserted in Paragraph 50 of the Counterclaim, and on that basis denies
13 the allegations.

14 51. Stardock lacks knowledge or information sufficient to form a belief about the truth
15 of any and all allegations asserted in Paragraph 51 of the Counterclaim, and on that basis denies
16 the allegations.

17 52. Stardock admits that Exhibit 7 to the Counterclaim shows a document titled
18 “GOG.com Digital Distribution Agreement” that purports to be between GOG and Defendants.
19 Stardock admits that the agreement in Exhibit 7 includes the language that GOG would obtain
20 “the rights for the Products names and related trademarks ... from the respectful [*sic*] rights
21 holder”. Stardock lacks knowledge or information sufficient to form a belief about the truth of
22 any and all other allegations asserted in Paragraph 52 of the Counterclaim, and on that basis
23 denies such allegations.
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Stardock Purportedly Buys Star Control Trademark and Star Control 3 Copyright

53. Stardock admits that in or around 2013, Atari filed for bankruptcy and put its assets up for auction, including the Star Control Franchise. Stardock denies that only Star Control 3 was included in the Star Control Franchise put up for auction. Stardock admits that Atari sold its Star Control Assets to Stardock under a Purchase Agreement dated July 18, 2013 and that the Purchase Agreement defined the Purchased Assets as including the Intellectual Property identified on Schedule 1.01(a), the contracts listed on Schedule 2.01(b), and certain causes of action related to the Intellectual Property. Stardock denies the allegation that any other assets and properties of Atari were specifically excluded from the Purchased Assets.

54. Stardock admits that Exhibit 5 to the Counterclaim shows the Purchase Agreement between Atari and Stardock. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegation that Schedule 1.01(a) and Schedule 2.01(b) to the Purchase Agreement were not attached to the filing with the bankruptcy court, and on that basis denies such allegation. Stardock denies the allegation that any intellectual property or contract rights were not transferred to Stardock.

55. Stardock admits the allegations in Paragraph 55 to the Counterclaim.

56. Stardock denies that the transfer of Atari's Digital Distribution Agreement with GOG Limited and Accolade's License Agreement with Reiche pertained only to Star Control 3. Stardock admits the other allegations in Paragraph 56 of the Counterclaim.

57. Stardock denies the allegation that Atari did not purport to sell, nor did it even own or have the right to sell, any rights to the alleged Reiche and Ford's Star Control Games to Stardock, including Reiche's Preexisting Characters used in Star Control 3. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other

1 allegations asserted in Paragraph 57 of the Counterclaim, and on that basis denies such
 2 allegations.

3 ***Reiche and Ford Repeatedly Reject Stardock's Requests to License Reiche***
 4 ***and Ford's Star Control Games for Use in Stardock's New Game***

5
 6 58. Stardock admits the allegations in Paragraph 58 of the Counterclaim, but asserts
 7 that the statements made in the referenced July 22, 2013 email are being presented out of context
 8 and were based on Mr. Wardell's understandings at the time and the representations and
 9 warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be
 10 false, misstated, and/or misleading.

11 59. Stardock admits the allegations in Paragraph 59 of the Counterclaim, but asserts
 12 that the statements made by Mr. Wardell in the referenced July 23, 2013 email are being
 13 presented out of context and were based on Mr. Wardell's understandings at the time and the
 14 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
 15 now believes to be false, misstated, and/or misleading.

16
 17 60. Stardock admits that on or around July 24, 2013, it announced its acquisition and
 18 plan to release a new game inspired by Star Control II. Stardock admits that at that time, the new
 19 game was expected to be more of a revisit to Star Control II than a continuation. Stardock denies
 20 the allegation that Mr. Wardell "admitted" that Atari doesn't own the copyright to Star Control I
 21 and II and that in order to make a Star Control II HD, a license from Reiche is needed. Stardock
 22 asserts that any such statements made by Mr. Wardell are being presented out of context and were
 23 based on Mr. Wardell's understandings at the time and the representations and warranties made,
 24 *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated,
 25 and/or misleading.
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61. Stardock admits that Mr. Wardell contacted Reiche and Ford on July 30, 2013 via email and suggested that Reiche and Ford work with Stardock on the development of Star Control: Origins, but denies any and all of the other allegations in Paragraph 65 of the Counterclaim in their entirety.

62. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 62 of the Counterclaim, and on that basis denies the allegations.

63. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 63 of the Counterclaim, and on that basis denies the allegations.

64. Stardock admits the allegations in Paragraph 64 of the Counterclaim.

65. Stardock admits that later that day (September 16, 2013), it acknowledged Reiche's and Ford's response, and that Stardock offered to sell the Star Control IP it acquired from Atari to Defendants. Except as expressly admitted herein, Stardock denies any and all of the other allegations in Paragraph 65 of the Counterclaim in their entirety.

66. Stardock admits the allegations in Paragraph 66 of the Counterclaim.

67. Stardock admits the allegations in Paragraph 67 of the Counterclaim.

***Stardock Begins Making False Statements About Reiche and Ford's Involvement
in Its New Game, and Asks Reiche and Ford Again Repeatedly to License
Their Star Control Games, Which They Refuse***

68. Stardock admits that Mr. Wardell participated in an interview on January 3, 2014. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 68 of the Counterclaim, and denies that Mr. Wardell made any false or misleading statements.

1 69. Stardock admits the allegations in Paragraph 69 of the Counterclaim, but asserts
2 that any such statements made by Mr. Wardell are being presented out of context and were based
3 on Mr. Wardell's understandings at the time and the representations and warranties made, *inter*
4 *alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or
5 misleading.

6
7 70. Stardock admits the allegations in Paragraph 70 of the Counterclaim.

8 71. Stardock admits the allegations in Paragraph 71 of the Counterclaim, but asserts
9 that any such statements made by Mr. Wardell are being presented out of context and were based
10 on Mr. Wardell's understandings at the time and the representations and warranties made, *inter*
11 *alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or
12 misleading.

13
14 72. Stardock admits the allegations in Paragraph 72 of the Counterclaim, but asserts
15 that any such statements made by Mr. Wardell are being presented out of context and were based
16 on Mr. Wardell's understandings at the time and the representations and warranties made, *inter*
17 *alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or
18 misleading.

19 73. Stardock admits the allegations in Paragraph 73 of the Counterclaim, but asserts
20 that any such statement made by Mr. Wardell is being presented out of context and was based on
21 Mr. Wardell's understandings at the time and the representations and warranties made, *inter alia*,
22 in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or
23 misleading.

24
25 74. Stardock admits the allegation regarding Mr. Wardell's December 3, 2015 email.
26 Stardock admits that it made the quoted statements with respect to the use of basic and
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28

1 unprotectable concepts and ideas from Star Control in Galactic Civilizations. Stardock denies the
2 allegation that Stardock had already “borrowed” heavily from Star Control II for the Galactic
3 Civilizations game.

4 75. Stardock admits that Mr. Wardell sent an email to Defendants on October 12,
5 2016, which speaks for itself. Defendants have misstated the contents of that email in Paragraph
6 75 of the Counterclaim, and further any such statements made by Mr. Wardell in the email are
7 being presented out of context and were based on Mr. Wardell’s understandings at the time and
8 the representations and warranties made, *inter alia*, in the 1988 License Agreement, which
9 Stardock now believes to be false, misstated, and/or misleading.

10 76. Stardock admits that Star Control: Origins and Galactic Civilizations provide
11 modification tools that allow users to build and create things in the game. Stardock admits that
12 on July 28, 2017, Mr. Wardell asked Reiche and Ford if, in light of the upcoming 25th
13 anniversary of Star Control II, they would do “an interview regarding your work on Star Control
14 1/2, the Ur-Quan Masters, past, present and future of your universe.” Stardock lacks knowledge
15 or information sufficient to form a belief about the truth of the allegation that Reiche and Ford
16 later learned that many ships and alien races from the alleged Reiche and Ford’s Star Control
17 Games appeared in Galactic Civilizations, and on that basis denies such allegations. Based on the
18 information that is now available to Stardock, it is now Stardock’s position that there was no need
19 to seek such permission and/or license from Reiche and Ford. Inasmuch as Reiche and Ford
20 allege that they own any intellectual property rights in the Classic Star Control Games, Stardock
21 denies that allegation. Except as expressly admitted herein, Stardock denies any and all of the
22 other allegations in Paragraph 76 of the Counterclaim in their entirety.

23 77. Stardock admits the allegations in Paragraph 77 of the Counterclaim.
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1 78. Except as otherwise denied below, Stardock admits the allegations in Paragraph 78
2 of the Counterclaim, but asserts that any such statements made by Mr. Wardell are being
3 presented out of context and were based on Mr. Wardell's understandings at the time and the
4 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
5 now believes to be false, misstated, and/or misleading. Based on the information that is now
6 available to Stardock, it is now Stardock's position that there was no need to seek such
7 permission and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they
8 own any intellectual property rights in the Classic Star Control Games, Stardock denies that
9 allegation.
10

11 79. Except as otherwise denied below, Stardock admits the allegations in Paragraph 79
12 of the Counterclaim, but asserts that any such statements made by Mr. Wardell are being
13 presented out of context and were based on Mr. Wardell's understandings at the time and the
14 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
15 now believes to be false, misstated, and/or misleading. Based on the information that is now
16 available to Stardock, it is now Stardock's position that there was no need to seek such
17 permission and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they
18 own any intellectual property rights in the Classic Star Control Games, Stardock denies that
19 allegation.
20

21 80. Stardock lacks knowledge or information sufficient to form a belief about the truth
22 of the allegation that Reiche or Ford own any intellectual property in Star Control I and Star
23 Control II, and on that basis denies the allegation. Except as otherwise denied below, Stardock
24 admits the other allegations in Paragraph 80 of the Counterclaim. Inasmuch as Reiche and Ford
25 allege that they own any intellectual property rights in the Classic Star Control Games, Stardock
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1 denies that allegation.

2 81. Stardock lacks knowledge or information sufficient to form a belief about the truth
3 of the allegation that the 1988 License Agreement terminated and expired in 2001, and on that
4 basis denies the allegation. Stardock admits that on October 4, 2017, it advised Reiche and Ford
5 that it had a license to use Reiche's and Ford's intellectual property under the 1988 License
6 Agreement. Based on the information that is now available to Stardock, it is now Stardock's
7 position that there was no need to seek such permission and/or license from Reiche and Ford.
8 Inasmuch as Reiche and Ford allege that they own any intellectual property rights in the Classic
9 Star Control Games, Stardock denies that allegation.
10

11 82. Except as otherwise denied below, Stardock admits the allegations in Paragraph 82
12 of the Counterclaim. Based on the information that is now available to Stardock, it is now
13 Stardock's position that there was no need to seek such permission and/or license from Reiche
14 and Ford. Inasmuch as Reiche and Ford allege that they own any intellectual property rights in
15 the Classic Star Control Games, Stardock denies that allegation.
16

17 83. Stardock denies that Mr. Wardell has made any admissions via its communications
18 with respect to any alleged Reiche and Ford intellectual property alleged in Paragraph 83 of the
19 Counterclaim. Except as otherwise denied below, Stardock otherwise admits the existence of the
20 communication as set forth in Paragraph 83 of the Counterclaim, but asserts that any such
21 statements made by Mr. Wardell are being presented out of context and were based on Mr.
22 Wardell's understandings at the time and the representations and warranties made, *inter alia*, in
23 the 1988 License Agreement, including Reiche and Ford's representations and warranties with
24 respect to the intellectual property they own related to the Classic Star Control Games, which
25 Stardock now believes to be false, misstated, and/or misleading. Based on the information that is
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1 now available to Stardock, it is now Stardock's position that there was no need to seek such
2 permission and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they
3 own any intellectual property rights in the Classic Star Control Games, Stardock denies that
4 allegation.

5
6 84. Stardock admits the existence of the communication as set forth in Paragraph 84 of
7 the Counterclaim, but asserts that any such statements made by Mr. Wardell are being presented
8 out of context and were based on Mr. Wardell's understandings at the time and the
9 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock
10 now believes to be false, misstated, and/or misleading. Inasmuch as Reiche and Ford allege that
11 they own any intellectual property rights in the Classic Star Control Games, Stardock denies that
12 allegation. Stardock lacks knowledge or information sufficient to form a belief about the truth of
13 any and all other allegations asserted in Paragraph 84 of the Counterclaim, and on that basis
14 denies such allegations.
15

16 85. Stardock admits that on October 7, 2017, Reiche and Ford responded and claimed
17 out that they had received no royalties for many years and therefore the 1988 License Agreement
18 had expired. Stardock also admits that Reiche and Ford also purported to advise Mr. Wardell
19 that Stardock's planned use of "Super Melee" from Star Control II in Star Control: Origins was
20 not authorized. Inasmuch as the allegations within Paragraph 85 of the Counterclaim suggest that
21 Reiche and Ford own any intellectual property as it pertains to the Classic Star Control Games
22 such that Stardock would have been required to seek Reiche and Ford's permission and/or license
23 to use the intellectual property, such allegations are denied.
24

25 86. Stardock admits that it responded later that day, but denies any and all other
26 allegations in Paragraph 86 of the Counterclaim in their entirety.
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1 87. Stardock admits that on October 9, 2017, Reiche and Ford announced their plans
2 to create and develop a new game that would be a sequel to The Ur-Quan Masters to be called
3 “Ghosts of the Precursors” and using the STAR CONTROL mark and UR-QUAN MASTERS
4 mark.

5 ***Stardock’s Copyright and Trademark Infringement and Other Unfair Competition***

6 88. Stardock admits that it has sold the Classic Star Control Games through Steam.
7
8 Stardock also admits that the screenshot from Stardock’s website depicted in Paragraph 88 of the
9 Counterclaim shows links to buy these games through Steam, and shows Stardock’s use of THE
10 UR-QUAN MASTERS mark. Except as expressly admitted herein, Stardock denies any and all
11 other allegations in Paragraph 88 of the Counterclaim, including the suggestion that Reiche and
12 Ford own any rights (intellectual property rights or otherwise) in and to the Classic Star Control
13 games such that Stardock would have been required to obtain Reiche’s and Ford’s permission
14 and/or license with respect to the sale thereof.

15
16 89. Stardock admits the allegation that Reiche and Ford sent Steam a notice of
17 infringement and request to remove the Classic Star Control Games. Except as expressly
18 admitted herein, Stardock denies any and all other allegations in Paragraph 89 of the
19 Counterclaim in their entirety.

20
21 90. Stardock admits the allegation that it sent GOG a counter-notice and on that basis
22 GOG resumed selling the Classic Star Control games. Except as expressly admitted herein,
23 Stardock denies any and all other allegations in Paragraph 90 of the Counterclaim in their
24 entirety.

25 91. Stardock denies the allegations in Paragraph 91 of the Counterclaim.

26 92. Stardock admits the allegations in Paragraph 92 of the Counterclaim.

1 93. Stardock admits the allegations in Paragraph 93 of the Counterclaim.

2 94. Stardock admits that in November 2017, it released a beta version of Star Control:
3 Origins. Except as expressly admitted herein, Stardock denies any and all other allegations in
4 Paragraph 94 of the Counterclaim in their entirety.

5 95. Stardock denies that the screenshot in Paragraph 95 of the Counterclaim shows the
6 ships as used in Star Control I or Star Control II. Based on the information that is now available
7 to Stardock, it is now Stardock's position that there was no need to seek such permission and/or
8 license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any intellectual
9 property rights in the Classic Star Control Games, Stardock denies that allegation.

10 96. Stardock admits that Star Control: Origins provides modification tools that allow
11 users to build and create things in the game. Except as expressly admitted herein, Stardock
12 denies any and all other allegations in Paragraph 96 of the Counterclaim in their entirety.

13 97. Stardock denies the allegations in Paragraph 97 of the Counterclaim in their
14 entirety.

15 98. Stardock denies the allegation that it has extensively used material from the
16 alleged Reiche and Ford's Star Control Games on Stardock's website and in marketing both the
17 Classic Star Control Games and Star Control: Origins. Stardock also denies that Reiche and Ford
18 have any rights in the Classic Star Control Games that would require Stardock to have acquired
19 Reiche's and/or Ford's permission and/or license to use material from the Classic Star Control
20 Games in connection with its website, marketing or otherwise.

21 99. Stardock denies any allegation that it has copied alien race artwork allegedly
22 owned by Reiche or Ford without Reiche's or Ford's permission and/or license or that Reiche or
23 Ford are in fact the owners of any alleged alien race artwork from Star Control I or Star Control
24 Games.

II. Stardock also denies that Reiche and Ford have any rights in the Classic Star Control Games that would require Stardock to have acquired Reiche's and/or Ford's permission and/or license to use material from the Classic Star Control Games in connection with its website, marketing or otherwise. Stardock admits the other allegations in Paragraph 99 of the Counterclaim.

100. Stardock admits that the parties were engaged in extensive settlement discussions from October-December 2017. Stardock denies that it was the party that broke off those settlement negotiations. Stardock admits that it filed suit against Reiche and Ford in mid-December. Stardock admits that it owns U.S. Copyright Registration No. PA 799-000. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 100 of the Counterclaim in their entirety.

FIRST CAUSE OF ACTION

(Copyright Infringement – 17 U.S.C. § 501)

101. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 100 above as if set forth in full.

102. Stardock denies the allegations in Paragraph 102 of the Counterclaim.

103. Stardock denies the allegations in Paragraph 103 of the Counterclaim.

104. Stardock denies the allegations in Paragraph 104 of the Counterclaim.

105. Stardock denies the allegations in Paragraph 105 of the Counterclaim.

106. Stardock denies the allegations in Paragraph 106 of the Counterclaim.

SECOND CAUSE OF ACTION

(Declaratory Judgment re: Ownership of Copyrights)

107. Stardock realleges and incorporates herein by reference its responses to Paragraphs

1 through 106 above as if set forth in full.

108. Stardock denies the allegations in Paragraph 108 of the Counterclaim.

109. Stardock denies the allegations in Paragraph 109 of the Counterclaim.

110. Stardock denies the allegations in Paragraph 110 of the Counterclaim.

THIRD CAUSE OF ACTION

(Unfair Competition – Lanham Act § 43(a) (15 U.S.C. § 1125(a))

111. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 110 above as if set forth in full.

112. Stardock denies the allegations in Paragraph 112 of the Counterclaim.

113. Stardock denies the allegations in Paragraph 113 of the Counterclaim.

114. Stardock denies the allegations in Paragraph 114 of the Counterclaim.

115. Stardock denies the allegations in Paragraph 115 of the Counterclaim.

116. Stardock denies the allegations in Paragraph 116 of the Counterclaim.

FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement and Unfair Competition)

117. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 116 above as if set forth in full.

118. Stardock denies the allegations in Paragraph 118 of the Counterclaim.

119. Stardock denies the allegations in Paragraph 119 of the Counterclaim.

120. Stardock denies the allegations in Paragraph 120 of the Counterclaim.

121. Stardock denies the allegations in Paragraph 121 of the Counterclaim.

122. Stardock denies the allegations in Paragraph 122 of the Counterclaim.

1 123. Stardock denies the allegations in Paragraph 123 of the Counterclaim.

2 124. Stardock denies the allegations in Paragraph 124 of the Counterclaim.

3
4 **FIFTH CAUSE OF ACTION**

5 **(Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*))**

6 125. Stardock realleges and incorporates herein by reference its responses to Paragraphs
7 1 through 124 above as if set forth in full.

8 126. Stardock denies the allegations in Paragraph 126 of the Counterclaim.

9 127. Stardock denies the allegations in Paragraph 127 of the Counterclaim.

10 128. Stardock denies the allegations in Paragraph 128 of the Counterclaim.

11
12 **SIXTH CAUSE OF ACTION**

13 **(Cancellation of U.S. Trademark Registration No. 2,046,036)**

14 129. Stardock realleges and incorporates herein by reference its responses to Paragraphs
15 1 through 128 above as if set forth in full.

16 130. Stardock denies the allegations in Paragraph 130 of the Counterclaim.

17
18 **SEVENTH CAUSE OF ACTION**

19 **(Conversion)**

20 131. Stardock realleges and incorporates herein by reference its responses to Paragraphs
21 1 through 130 above as if set forth in full.

22 132. Stardock denies the allegations in Paragraph 132 of the Counterclaim.

23 133. Stardock denies the allegations in Paragraph 133 of the Counterclaim.

24 134. Stardock denies the allegations in Paragraph 134 of the Counterclaim.

25 135. Stardock denies the allegations in Paragraph 135 of the Counterclaim.

RESPONSE TO PRAYER FOR RELIEF

To the extent that this section requires a response, Stardock denies that Defendants are entitled to any relief whatsoever from any of the claims alleged in their purported Counterclaim, including any of the relief alleged and listed in the Counterclaim's Prayer for Relief.

GENERAL DENIAL

Stardock further denies each and every allegation in the Counterclaim that is not specifically admitted, denied, or otherwise responded to in this Answer.

AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE**

Defendants fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants' claims are barred by the doctrines of estoppel, waiver and/or laches.

THIRD AFFIRMATIVE DEFENSE

Defendants are not entitled to injunctive relief because, among other thing, there is no risk of irreparable harm and money damages would be adequate.

FOURTH AFFIRMATIVE DEFENSE

One or more of Defendants' claims are barred by preemption.

FIFTH AFFIRMATIVE DEFENSE

Defendants lack standing to bring one or more of their causes of action.

SIXTH AFFIRMATIVE DEFENSE

On information and belief, Defendants' copyright claims are barred and their claimed work is not entitled to copyright protection because their copyright and/or copyright registration is invalid and/or unenforceable.

SEVENTH AFFIRMATIVE DEFENSE

On information and belief, Defendants' copyright claims are barred because they are not the rightful owner of the alleged copyright.

EIGHTH AFFIRMATIVE DEFENSE

Defendants' copyright claims are barred and Defendants trademark claims are limited because any alleged infringement was innocent and lacked intent.

NINTH AFFIRMATIVE DEFENSE

On information and belief, Defendants' trademark and related claims are barred because they are based on trademark rights that Defendants do not own.

TENTH AFFIRMATIVE DEFENSE

Defendants' trademark and related claims are barred because the alleged infringing use was not as a source identifier.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants' claims are barred, in whole or in part, because Stardock had a license to use the claimed copyrights and/or trademark rights.

TWELFTH AFFIRMATIVE DEFENSE

Defendants' claims are barred, in whole or in part, in that Defendants authorized, consented to, and/or acquiesced in Stardock's alleged actions.

THIRTEENTH AFFIRMATIVE DEFENSE

On information and belief, Defendants' alleged copyright claims are barred under 17 U.S.C. § 411 and this Court lacks subject-matter jurisdiction over such claims in that Defendants failed to file for and/or obtain a copyright registration for at least some of the claimed copyrights before filing the Counterclaim.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants' remedies for its copyright claims are limited under 17 U.S.C. § 412 in that it failed to obtain a copyright registration within three months after the first publication of the work.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants' copyright claims are barred by the doctrine of fair use.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants' trademark claims are barred by the doctrine of fair use.

ADDITIONAL AFFIRMATIVE DEFENSES

Stardock reserves the right to supplement its affirmative defenses as discovery progresses and additional information becomes available.

JURY DEMAND

Stardock demands a trial by jury on all issues so triable.

Dated: April 16, 2018

Respectfully submitted,

NIXON PEABODY LLP

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